

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 51480,
51481, 51482, and
51483**

Petitioner:

THE PINEY VALLEY RANCHES TRUST,

v.

Respondent:

**COSTILLA COUNTY BOARD OF
COMMISSIONERS.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on January 29, 2010 and September 1, 2010, Debra A. Baumbach and Karen E. Hart presiding. Petitioner was represented by Mikaela V. Rivera, Esq. Respondent was represented by Edwin J. Lobato, Esq. Petitioner is requesting an abatement/refund of taxes on the subject properties for tax year 2007.

The Board consolidated Dockets 51480, 51481, 51482, and 51483.

Near the end of the hearing, Petitioner withdrew Dockets 51480 and 51482. Subsequent to the hearing, Petitioner submitted a Motion for Reinstatement, which was granted on February 19, 2010.

The subject properties consist of four vacant land parcels as follows:

| <u>Docket Number</u> | <u>Schedule Number</u> | <u>Acreage</u> |
|----------------------|------------------------|------------------|
| 51483 | 11000450 | 4,509.00 |
| 51482 | 10009901 | 180.00 |
| 51480 | 10010054 | 2,140.00 |
| 51481 | 10007720 | <u>10,104.60</u> |
| | Total Acreage | 16,933.60 |

The Piney Valley Ranches Trust owns property in Eagle and Costilla counties in Colorado, property in Utah, and also several BLM grazing leases. They graze their other properties with sheep and hold the Costilla property in reserve in case additional sheep grazing land is needed. The

subject properties were under an oral lease in 2005, 2006, and 2007 to Mr. Daniel Archuleta and/or Mr. Salvador Ramirez.

On May 1, 2007, the Costilla County Assessor issued a Real Property Notice of Valuation (NOV) for each of the subject properties, showing a slight downward change in value. The land was classified as agricultural.

On June 30, 2007 and July 13, 2007, the Costilla County Assessor issued a Special Notice of Valuation (SNOV) for each of the subject properties, reclassifying the subject properties from agricultural to vacant land and increasing the actual value assigned to each property. The value assigned on the SNOVs was as follows:

| <u>Schedule Number</u> | <u>Actual Value</u> |
|------------------------|-----------------------|
| 11000450 | \$2,112,000.00 |
| 10009901 | \$99,000.00 |
| 10010054 | \$1,177,000.00 |
| 10007720 | <u>\$5,557,530.00</u> |
| Total value | \$8,945,530.00 |

Petitioner had received no prior notice indicating the value or classification was going to be changed. There was no information regarding why the classification was changed and no inspection of the properties had been requested of Petitioner by the Assessor. By letter dated July 17, 2007, Petitioner protested the SNOV value and classification change.

Respondent's witness, Ronda Lobato, Costilla County Deputy Assessor, testified that the Costilla County Assessor's Office had received no response to the agricultural questionnaire mailed in June 2007. Costilla County Assessor's office personnel inspected the subject properties on July 20, 2007. The Board notes that the inspection date was subsequent to the mailing of the SNOVs changing the subject properties classification.

A Special Notice of Determination (SNOD) was sent on each of the properties on August 15, 2007, denying any adjustment and upholding the values assigned on the SNOVs. Petitioner did not receive the SNOD until some time in October 2007 as they were sent to an incorrect address.

Petitioner filed a petition for abatement or refund of taxes dated June 20, 2008 for subject properties Schedule Nos. 10007720, 10009901, and 10010054, requesting a return to an agricultural classification. The abatement included three additional properties that are not a part of this appeal. The Board notes the petition showed the incorrect tax year of 2008, which was corrected at the hearing to reflect the correct tax year of 2007.

Petitioner filed a second petition for abatement or refund of taxes dated June 20, 2008 for subject property Schedule No. 11000450, requesting the corrected value based on agricultural classification. The abatement included three additional schedule numbers which are not a part of this appeal. The Board notes the petition showed the incorrect tax year of 2008, which was corrected at the hearing to reflect the correct tax year of 2007.

Petitioner did not receive a Notice of Hearing from Respondent. Respondent denied the petitions at their meeting on July 16, 2008.

Petitioner's witness, Mr. Eric Applegate, testified that in August 2008 he received the Notice of Denial for the six parcels that are not a part of this appeal but did not receive notices for the four parcels which are the subject of this appeal. Mr. Applegate requested copies of the Notices of Denial from Respondent on several occasions but never received them.

On April 30, 2010 the Board issued an Order to Show Cause in this matter because it did not appear that Petitioner's Petitions to the Board were filed within thirty days of the entry of Respondent's denials, and it appeared that the Board lacked jurisdiction over these matters (Section 39-10-114.5(1), C.R.S.). The Board received written responses from both parties to the Order to Show cause as well as Respondent's Motion for Dismissal. The Board heard arguments from the parties on September 1, 2010 as to whether the Petitions should be dismissed due to lack of jurisdiction.

The Board is not convinced Respondent mailed the Notices of Denial to Petitioner. The letter purported to be the denial notification does not identify any associated property either by schedule number, name, legal description, address or any other identifying information; it is a generic form letter. Section 39-10-114.5(1), C.R.S. provides that a taxpayer's administrative appeal from the Board of Costilla County decision...must be filed with the Board of Assessment Appeals no later than thirty days after the "entry" of any such decision. The court stated in *Ward v. Douglas County Board of Commissioners*, 886 P.2d 310 (Colo. App. 1994), that statute and due process require that the notices actually be sent to the last known address. As the Board finds the notices were not sent, the Board also finds the petitions were timely filed as the 30 day period was never triggered. Respondent's Motion to Dismiss is denied.

After reviewing the evidence and testimony presented at both hearings, the Board is not convinced that the Costilla County Assessor had the authority to issue the SNOVs for the subject properties for tax year 2007. Section 39-5-121(1)(a), C.R.S. states:

No later than May 1 in each year, the assessor shall mail to each person who owns land or improvements a notice setting forth the valuation of such land or improvements. . . Based upon the classification of such taxable property, the notice shall also set forth either the ratio of valuation for assessment to be applied to said actual value of all taxable real property other than residential real property prior to the calculation of property taxes for the current year or the projected ratio of valuation for assessment to be applied to said actual value of residential real property prior to the calculation of property taxes for the current year and that any change or adjustment of the projected ratio of valuation for assessment for residential real property shall not constitute grounds for the protest or abatement of taxes. . . The notice shall state, in bold-faced type, that the taxpayer has the right to protest any adjustment in valuation but not the estimate of taxes if such an estimate is included in the notice, the classification of the property that determines the assessment percentage to be applied, and the dates and places at which the assessor will

hear such protest.

The Costilla County Assessor was required to mail a tax year 2007 NOV with the actual value and classification of the subject properties by May 1, 2007. The Costilla County Assessor only has authority to issue a SNOV if permitted by an exception to Section 39-5-121(1)(a), C.R.S. Section 39-5-125(1), C.R.S. does provide one such exception:

[W]henever it is discovered that any taxable property has been omitted from the assessment roll of any year or series of years, the assessor shall immediately determine the value of such omitted property and shall list the same on the assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for prior years.

However, as discussed by the Colorado Court of Appeals in *Jet Black, LLC v. Routt County Board of County Commissioners*, 165 P.3d 744, 750 (Colo.App. 2006), “Section 39-5-125(1) authorizes retroactive assessments of taxes from prior years on previously omitted property, *but not on omitted value.*” The SNOVs issued for the subject properties were not for omitted property, but rather a change in classification and increase in actual value of the subject properties.

Further, the Division of Property Taxation’s Manual, the *Assessor’s Reference Library*, does not reference issuing a SNOV for a change in classification. The section “Special Notices of Value: Circumstances Requiring a Special NOV” in volume 2, page 3.37, does not list change in classification as one of those circumstances.

There was no statutory exception permitting the Costilla County Assessor to issue a SNOV to change the classification and increase the actual value of the subject properties after the May 1, 2007 NOV.

The Board concludes that the Costilla County Assessor did not have authority to issue the 2007 SNOVs for the subject properties; therefore, the SNOVs were invalid. The 2007 NOVs stand.

ORDER:

The appeal of the valuations reflected on the SNOVs issued by Respondent on June 30, 2007 and July 13, 2007 is dismissed.

The Costilla County Assessor is directed to change his records to reflect the classification and actual value listed on the tax year 2007 Real Property Notices of Valuation for the subject properties.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 21 day of October 2010.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

Karen E Hart
Karen E. Hart

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Amy Bruins
Amy Bruins

